IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3293 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBALAL GALDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DV PARIKH for Petitioner

MR SP SEN, Ld. AGP for Respondents No. 1-3

MR DJ BHATT for Respondents No. 4-7

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/10/2001

ORAL JUDGEMENT

1. Heard Mr.D.v.Parikh, learned advocate for the petitioner, Mr.S.P.Sen, learned AGP for the respondent Nos.1 to 3 and Mr.D.J.Bhatt, learned advocate for the respondent Nos.4 to 7.

2. This Court has issued notice on 3rd May, 2001 and granted ad-interim relief in terms of para-14(b) till then. Subsequently, ad-interim relief was extended by this Court on 20th June, 2001 till further orders.

3. The matter is taken up for hearing today. Considering the submissions made by learned advocates, Rule. Mr.S.P.Sen, learned AGP waives service of Rule for the respondent Nos.1 to 3 and Mr.D.J.Bhatt, learned advocate waives service of rule for the respondent Nos.4 to 7.

4. The brief facts of the present case are as under:-

According to the petitioner, the petitioner purchased 0.24 gunthas out of Survey No.230/3 and 0.28 gunthas out of Survey No.234 of village Bhat in Gandhinagar Taluka by registered sale deeds in the Year 1978. According to them, they were duly entered in village record and entries were made in the Year 1983. According to the petitioner, it was specifically mentioned at the time of entering into sale deeds that the said lands were irrigated (Piyat) lands. Even the Mamlatdar had verified and found that lands in question were irrigated lands. Thereafter, the Prant Officer has passed an order on 18th July, 1990, wherein he has specifically found these lands as irrigated lands. On the basis of this order, mutation entries were duly made on 31st January, 1992 and it was clarified that the said Survey numbers were not fragments, which was done by notation in village Form No.6. It is also submitted by the petitioner that the petitioner ownes Survey No.233 which is just adjoining along with the aforesaid survey numbers and, therefore, according to the petitioner, there is no question of any fragment coming into existence. According to the petitioner, in view of the above facts, two Fragmentation Cases Nos.797 and 798 of 1986 were initiated by Prant Officer and, thereafter, on 12th July, 1997, Prant Officer has passed an order stating that there was nothing on record to show lands were irrigated lands and there was nothing to show that purchaser owned any other land adjoining the lands in question and, therefore, sale transactions have led to fragments coming into existence in violation of Sections 7 and 8 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and sale deeds were null and void in view of Section 7(1) of the said Act. This order of the Prant Officer dated 12th July, 1997 has been challenged by the petitioner by preferring the

Revision Applications and Revisional Authority has also upheld the above findings and held that there was nothing to show lands were irrigated lands inspite of various evidences and submissions made before the Revisional Authority has not considered the same and the Revisional Authority has also not deal with the submissions pertaining to res-judicata and principles of natural justice and other submissions regarding ownership of petitioner of the adjoining Survey No.233 which clearly establishes that there was no question of fragment coming into existence in the present case.

5. Mr.D.V.Parikh, learned advocate for the petitioner has submitted that the order has been passed by the Prant Officer in both the cases being Fragmentation Cases Nos.797 and 798 of 1986 in absence of the petitioner. Though, according to the Prant Officer, notices were issued, no one was present in those cases and, therefore, the order has been passed by the Prant Officer on 20th October, 1997 in absence of the petitioner and, therefore, the petitioner is entitled to a reasonable opportunity for hearing before the Prant Officer and the order passed by the Prant Officer is against the principles of natural justice. Mr.Parikh has also submitted that the order passed by the Prant Officer dated 20th October, 1997 has been challenged by the petitioner before the Revisional Authority under Section 35 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and before the Revisional Authority, on behalf of the petitioner though the learned Advocate has made a request to adjourn the matter, the said request has been rejected by the Revisional Authority and in absence of the petitioner, the Revisional Authority on 19th July, 2000 rejected the Revision Application, while confirming the order of Deputy Collector, Gandhinagar on 20th October, 2000. Therefore, the submission of Mr.D.V.Parikh is that before both the authorities the petitioner was not able to represent his case effectively and eventhough the petitioner having in possession of the lands, the authority decided the case on merits. Therefore, the request is made by Mr.Parikh, learned advocate for the petitioner that both the orders are required to be quashed and set aside and to remand the matter to the Deputy Collector, Gandhinagar to examine the merits of the matter afresh, after giving a reasonable opportunity to the petitioner.

6. Mr.S.P.Sen, learned AGP for the respondent Nos.1 to 3 has submitted that the reasonable opportunity has been given by both the authorities to the petitioner, but

the same has not been availed by the petitioner and, therefore, both the authorities have passed written orders and, therefore, no any interference is required, while exercising the power under Articles 226 and 227 of the Constitution of India.

7. Mr.D.J.Bhatt, learned advocate for the respondent Nos.4 to 7 has submitted that the necessary notices were also issued to the petitioner by both the authorities and before the Revisional Authority, the learned advocate though remained present and made a request to adjourn the matter, the said request was rejected. In light of this fact, the authority passed the order on merits. However, he also submitted that if the petitioner wants to submit any documents before the authority on merits then this Court may pass appropriate orders by quashing and setting aside the order in question by remanding the matter to the concerned authority.

8. In view of the submissions made by respective parties, and after perusal of both the orders, according to my opinion, prima facie, though the reasonable opportunity was given to the petitioner by the concerned authorities, the same was not availed by the petitioner before the concerned authority. But, looking to the observations made by both the authorities, the documents have not been taken into consideration. Therefore, in light of this fact, a reasonable opportunity is required to be given to the petitioner to satisfy the concerned authority in respect to the breach of Section 9(1) of the said Act. Therefore, considering this aspect, the order passed by the Prant Officer, Gandhinagar in Fragmentation Case Nos.797 and 798 of 1986 dated 20th October, 1997 and the order passed by the Deputy Secretary (Appeals) dated 19th July, 2000 are hereby quashed and set aside and it is directed to the Deputy Collector, Gandhinagar to decide the Fragmentation Case Nos.797 and 798 of 1986 afresh after giving reasonable opportunity to the respective parties and to pass an appropriate order in accordance with law as early as possible.

9. In light of these observations and directions, this petition is disposed of. Rule is made absolute. No order as to costs.

(H.K.Rathod,J.)

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